

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
GEORGE ARMSTRONG, d.b.a.)
B & W FEED COMPANY, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 78-221

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty (odor) allegedly in violation of respondent's Section 9.11(a) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington on November 1, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by his attorney, David A. Webber. Respondent appeared by its attorney, Keith D. McGoffin. Reporter Marilyn Hoban recorded the proceedings.

WAH/DO

1 Witnesses were sworn and testified. Exhibits were admitted. After
2 testimony heard and exhibits examined, the Pollution Control Hearing
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 45.17B.260, has filed with the Board
7 a certified copy of its Regulation I containing respondent's regulations
8 and amendments thereto, of which official notice is taken.

9 II

10 Appellant, B & W Food Company, Inc., owns a warehouse in which it
11 stores salvaged bakery products at 1420 South Concord Street, Seattle.
12 These products are gathered, daily, from local bakeries and shipped
13 by truck to Portland three times per week. In Portland the products
14 are made into feed for cattle and other stock. The usual turnover
15 time for the bakery products within appellant's warehouse is two weeks.
16 The warehouse is within a "Light Industrial" zone and is enclosed except
17 for receiving and shipping doors.

18 III

19 Adjacent to the warehouse, only 25-30 feet away, is an apartment
20 building (see Exhibit B-1). There is another apartment building across
21 the street from the warehouse. These apartments are in a "Commercial"
22 zone. Respondent has received complaints of odor emanating from
23 appellant's warehouse, from occupants of these apartment buildings.
24 Respondent has contacted the appellant on several prior occasions and
25 warned appellant of these odor complaints. The odor is like that of
26 rotting bread and caused the owner of the apartment complex across the

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street to become very nauseated while driving home on the date in question, August 7, 1978. She complained to the respondent on that day.

On August 7, 1978, respondent's inspector went to the scene in response to this complaint. The inspector stood near the warehouse and detected a sustained odor emanating from it during the 20 minutes of his observation. The inspector uses a scale of 0-4 to express the intensity of an odor which is as follows:

<u>Rating</u>	<u>Description</u>
0	No detectable odor.
1	Odor barely detectable.
2	Odor distinct and definite, any unpleasant characteristics recognizable.
3	Odor strong enough to cause attempts at avoidance.
4	Odor overpowering, intolerable for any appreciable time.

The inspector rated and described the odor from appellant's warehouse as No. 2 stale bread odor.

The appellant received a Notice and Order of Civil Penalty (No. 3955) alleging violation of respondent's Section 9.11(a) and assessing a civil penalty of \$250. From this, appellant appeals.

IV

Appellant has one previous violation of respondent's regulations for combined dust and odor emission. Subsequent to this, appellant has expended some \$2,000 on measures designed to suppress dust.

V

Any Conclusion of Law which should be deemed a Finding of Fact is

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

hereby adopted as such.

From these findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

Respondent alleges that the odor from appellant's warehouse violated Section 9.11(a) of respondent's Regulation I which states

It shall be unlawful for any person to cause or permit the emission of an air contaminant or water vapor, including an air contaminant whose emission is not otherwise prohibited by this Regulation, if the air contaminant or water vapor causes detriment to the health, safety, or welfare of any person, or causes damage to property or business.

"Air contaminant" means "odorous substance." Section 1.07(k), RCW 70.94.030(1). "Emission" is the "release into the outdoor atmosphere of air contaminants." Section 1.07(j), RCW 70.94.030(3). Air Pollution is defined as:

... presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. Section 1.07(c), RCW 70.94.030(2)

Because all air is thus makes "air pollution" unlawful. Therefore, when an odor is present in the outdoor atmosphere in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property, Section 9.11(a) is violated. Cudahy, Co., v. Puget Sound Air Pollution Control Agency, 390 P.2d 77-93,

Oct 21, 1967

SEAL OF THE CITY OF SEATTLE,
OFFICE OF THE CLERK OF THE BOARD

1 We conclude that appellant violated respondent's Section 9.11(a)
2 on August 7, 1978, by causing an emission of odor which unreasonably
3 interfered with the complainant's enjoyment of life and property, thus
4 causing a detriment to the welfare of that person.

5 II

6 Section 3.29 allows assessment of a civil penalty of up to \$250
7 per day for each violation of a regulation of the respondent.

8 III

9 Because a variance proceeding may reveal precautions which appellant
10 could take to prevent such odor violations as this one, and because a
11 variance would afford the opportunity to implement them, this civil
12 penalty should be suspended on condition that appellant apply to
respondent, within three months, for a variance from the respondent's
14 regulations controlling odor.

15 IV

16 We have examined the remaining contentions of appellant and find
17 them to be without merit.

18 V

19 Any Finding of Fact which should be deemed a Conclusion of Law
20 is hereby adopted as such.

21 From these Conclusions, the Board enters this

22 ORDER

23 The violation and \$250 civil penalty (No. 3955) are each affirmed,
24 provided however, that the entire penalty is suspended on condition
25 that appellant apply to respondent within three months of appellant's
receipt of this Order, for a variance from respondent's regulations

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

controlling odor.

DONE at Iacey, Washington, this 15th day of Januar, , 1979.

POLLUTION CONTROL HEARINGS BOARD

David S. Money
DAVID S. MONEY, Chairman

Chris Smith
CHRIS SMITH, Member

FILE FINDINGS OF FACT,
G. CLERKS OF LAW AND ORDER